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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JAN 20 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Interconnection and Resale Obligations )  
Pertaining to ) CC Docket No. 94-54  
Commercial Mobile Radio Services )

REPLY COMMENTS OF SOUTHWESTERN BELL MOBILE SYSTEMS, INC.  
AND PACIFIC BELL MOBILE SERVICES

Southwestern Bell Mobile Systems, Inc. and Pacific Bell Mobile Services

(collectively "SBMS") files this reply to Comments filed in response to the Commission's request for updated comments on whether it should impose a mandated automatic roaming rule for CMRS providers.<sup>1</sup> The updated comments fail to provide any justification for the Commission to impose and regulate mandatory automatic roaming agreements. Rather, as has been the case throughout this docket, the majority of the commentors continue to oppose a mandatory automatic roaming requirement.<sup>2</sup> The evidence presented indicates that the new entrants are voluntarily entering into agreements with existing carriers and other new entrants, thus further demonstrating that the adoption of a mandatory automatic roaming rule is unwarranted and unnecessary.

<sup>1</sup> See, Public Notice, *Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular Broadband PCS and Covered SMR Networks*, CC Docket 94-54 (Released December 5, 1997).

<sup>2</sup> See, Additional Comments of Nextel; Comments of the Rural Telecommunications Group; Comments of Centennial Cellular Corporation; Comments of the American Mobile Telecommunications Association, Inc.; Supplemental Comments of GTE Service Corporation; Comments of United States Cellular Corporation; Comments of the Personal Communications Industry Association; Supplemental Comments of Airtouch Communications, Inc.; Comments of 360 Communications Company; Comments of BellSouth Corporation; Comments of Southwestern Bell Mobile Systems, Inc. and Pacific Bell Mobile Services; (filed January 5, 1998; CC Docket 94-54). See Also, Further Comments of Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS") "imposition of mandatory automatic roaming regulations is unnecessary" but requesting that the Commission should declare "unjust and unreasonable for cellular carrier to impose service restrictions based upon the home origin of a roaming PCS customer".

**1. The Updated Comments Demonstrate that an Automatic Roaming Requirement Regulatory Regime is Not Necessary—New Entrants are Entering into Automatic Roaming Agreements.**

The updated comments indicate that the new PCS entrants are taking advantage of the new advances in technology (e.g. dual- and tri-mode phones, dual mode handsets) and entering into automatic roaming agreements with cellular carriers and other PCS providers.<sup>3</sup> Sprint PCS indicates that it “has concluded reciprocal automatic roaming agreements with several dozen CMRS carriers across the country, providing automatic roaming coverage for over seventy-five percent of the United States”.<sup>4</sup> GTE notes that it has executed roaming agreements with at least nine separate broadband PCS providers.<sup>5</sup> Likewise, 360 Communications Company reports that it has entered into five automatic roaming agreements with broadband PCS providers and is in the process of negotiating additional agreements with twelve other new carriers.<sup>6</sup> Similarly, SBMS noted in its Comments that it has negotiated and is negotiating agreements with various new PCS providers including those in the C/D/E/F block.<sup>7</sup> PCIA notes that the experience of its membership, which includes new broadband PCS entrants and 800 MHz SMR providers, indicates fear of anti-competitive conduct by CMRS carriers remain unrealized.<sup>8</sup> Instead, actual experience since the last pleading cycle indicates that economic incentives and the competitive market are sufficient to spur automatic roaming agreements—a regulatory mandate and associated regulatory regime for roaming is not required.

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<sup>3</sup> Comments of Cellular Telecommunications Industry Association (CTIA), pp. 3-11 (filed January 5, 1998 CC Docket 94-54).

<sup>4</sup> Sprint PCS, pp. 2-3.

<sup>5</sup> GTE, p. 3.

<sup>6</sup> 360, p. 2.

<sup>7</sup> SBMS, 3-4 and Attachment A.

<sup>8</sup> PCIA, p 3.

## **2. Those Advocating a Mandatory Automatic Roaming Rule Fail to Establish a Clear Need for Additional Regulation.**

Despite the success demonstrated by Sprint PCS and other new entrants who have successfully negotiated automatic roaming agreements, some new entrants still believe that for whatever reason they will not be able to negotiate such agreements and demand automatic roaming be mandated. Congress and the Commission have indicated that increased regulation of CMRS should occur only when there is a demonstration of a “clear cut need”.<sup>9</sup> The proponents of a mandatory automatic roaming regulation have failed to show a clear cut need for such regulation.

### **a. There is no clear showing that mandatory automatic roaming is required for the build out of networks.**

Despite the absence of any automatic roaming rule when they bid for their licenses, three PCS carriers now claim that a mandatory automatic roaming rule is essential for them to build out their licensed service area and compete.<sup>10</sup> Cincinnati Bell claims that “current market conditions do not allow PCS operators to fund the complete build out of their networks”.<sup>11</sup> Merotel claims that it and the other new carriers are entitled to some type of “preferences” and are unable to compete without “some assistance from this Commission”.<sup>12</sup> Omnipoint claims that automatic roaming should be required for five years to give the new entrants a chance to build out their networks and that each carrier should be mandated to charge the same price to all carriers.<sup>13</sup> At the

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<sup>9</sup> See, Airtouch pp. 5-7.

<sup>10</sup> Comments of Omnipoint Communications, Inc., pp. 1-2; Comments of Cincinnati Bell, pp. 3-5; Comments of Merotel, 2-3.

<sup>11</sup> Cincinnati Bell, p. 3.

<sup>12</sup> Merotel, p. 4.

<sup>13</sup> Omnipoint, pp. 5-6.

time each of the parties bid for their licenses, automatic roaming was not mandatory and thus could not have been something that the carriers took into account in their business plans.

Other new entrants are negotiating with various carriers and entering into voluntary automatic roaming agreements. It is unclear from the comments what the true extent of Cincinnati Bell and Meretel's negotiations have been. Cincinnati Bell indicates that it "is just entering the discussion stages with incumbent operators for roaming services" and that its efforts to "piggyback" on third party agreements have been unsuccessful.<sup>14</sup> Cincinnati Bell fails to state whether it has attempted to negotiate directly with other carriers. Meretel states that attempts to negotiate a roaming agreement for roaming within its home service area have been unsuccessful but fails to describe its efforts on roaming agreements outside of its home service area.<sup>15</sup> Likewise, neither party addresses whether it has made any efforts to negotiate roaming agreements with other PCS providers.

Omnipoint does not address any efforts to negotiate roaming agreements. Rather, Omnipoint merely suggests that the Commission mandate that any carrier offering roaming service must charge the same price to all other carriers seeking to roaming on their network.<sup>16</sup> Such a requirement would be anti-competitive as it would destroy the ability of carriers to differentiate themselves based on price and would discourage build out. For example, a cellular carrier operating in a MSA may be willing to enter into a

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<sup>14</sup> Cincinnati Bell, p. 6.

<sup>15</sup> Meretel, pp. 2-4..

<sup>16</sup> Omnipoint, p. 2.

reciprocal reduced roaming rate with the operator of two adjoining RSA's in an attempt to match the PCS provider's footprint by offering the MSA customers service in the RSA at "home rates". Such a decision would be made after analyzing the demographics and anticipated balance of traffic. However, under the Omnipoint view, the cellular carriers would be obligated offer that reduced roaming rate to the PCS provider also, thus exacerbating the competitive preference the PCS provider has via the larger licensed service area.

As noted by various parties, the imposition of a mandatory automatic roaming rule would undermine competition, impose unnecessary costs and burdens on CMRS providers and have a chilling effect on competition.<sup>17</sup> The Commission itself recognizes that the imposition of an automatic roaming requirement would be costly and burdensome.<sup>18</sup> Small carriers such as Centennial Cellular and those represented by the Rural Telecommunications Group acknowledge that an automatic roaming rule will significantly increase their costs and claim that such a rule will have a disproportionate impact on small carriers.<sup>19</sup> The imposition of an automatic roaming rule on such small carriers, as well as large carriers, represents a costly endeavor, and one that is without benefit to such carrier's customers. If an automatic roaming agreement makes economic sense, a carrier will enter into it. A competitive market demands such flexibility and the right of freedom to contract.

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<sup>17</sup> Airtouch, pp. 3, 14-16; BellSouth, pp. 2-6; Rural Telecommunications Group, pp. 2-3; Centennial Cellular Corporation, pp. 2-5; 4-5. See Also, Comments of Southwestern Bell Mobile Systems, Inc. pp. 1-19, filed October 4, 1996 in response to Third Notice of Proposed Rulemaking, CC Docket 94-54.

<sup>18</sup> In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, para. 29 (Released August 13, 1996).

<sup>19</sup> Centennial Cellular Corporation, pp. 1-4; Rural Telecommunications Group, pp. 1-3.

Roaming was not meant to be a subsidy for a carrier building out its licensed service area. There is no clear cut showing that an automatic roaming requirement is essential for the build out of the new entrants networks or that such justifies the imposition of such far reaching regulation as the imposition of a mandatory automatic roaming requirement.

**b. There is no clear cut showing of a need for an in-market automatic roaming requirement.**

AT&T Wireless and Sprint PCS request the Commission to adopt a limited automatic roaming rule that would require automatic roaming agreements for “in-market roaming”.<sup>20</sup> “In-market roaming” refers to instances where a customer is within its carrier’s licensed service area but service is not available from the provider due to a lack of build-out of the network. Both companies contend that they have encountered a few providers who refuse to negotiate “in-market” roaming agreements. AT&T also notes that it has encountered carriers which refuse to consider agreements except at “excessively high rates”.<sup>21</sup>

SBMS has entered into nationwide roaming agreements with Sprint PCS and AT&T which include “in-market” roaming.<sup>22</sup> AT&T reference to “excessively high” rates seemingly was not directed at SBMS as the rate is equal to, and in some cases less than, depending on the market, the reciprocal rates charged when the SBMS-AT&T

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<sup>20</sup> Additional Comments of AT&T Wireless Services, Inc., pp. 1, 4; Sprint PCS, pp. 3-7.

<sup>21</sup> AT&T, at 3-4; Sprint PCS, at 5.

<sup>22</sup> See, AT&T, 8-9; Sprint PCS, p. 3. SBMS disagrees with BellSouth’s assertions that such agreements, when properly negotiated, raise “serious anti-trust concerns” and or that it is questionable whether such meaningful agreements can lawfully be negotiated”. BellSouth, at 5-6.

agreement was cellular only. The roaming agreements were voluntarily negotiated without a need for any type of mandatory automatic roaming rule.

As noted previously, there is an economic incentive to negotiate such in-market roaming agreements - - SBMS would rather have customers roaming on its system than any of its competitors. This economic incentive encourages carriers not only to consider entering into such agreements but assures that the charges are competitive, based on all the various factors which are analyzed in setting roaming rates. In each market, a carrier seeking a roaming agreement has the ability to shop not only the two cellular providers but also any of the other CMRS providers for a roaming agreement.

SBMS generally supports the positions taken by BellSouth and Airtouch that mandatory in-market roaming is not required under the Telecommunications Act.<sup>23</sup> Although SBMS voluntarily entered into in-market roaming agreements it is firmly against any Commission mandated requirement for such agreements or Commission regulation over the rates charged in such agreements.

The decision to enter into a roaming agreement and the rate to be charged depend upon factors unique to the two carriers including geography, amount and balance of traffic including whether the opportunity for both parties customers to use the others system is anticipated, number of anticipated roamers, roaming patterns, system sophistication and technical feasibility.<sup>24</sup> For example, while a cellular carrier may be willing to enter into a reduced rate reciprocal roaming agreement with the operator of a neighboring RSA to increase its footprint and because of an anticipated low number of

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<sup>23</sup> See generally, BellSouth, pp. 3-5; Airtouch, pp. 4-16.

<sup>24</sup> See, 360, p. 3; SBMS Third NPRM Comments, p. 3.

roamers from such RSA, the situation is different given an in-market carrier whose customers will live in the area and will be on the system only until the other competitor decides to build out its system. Carriers should retain the ability to consider all relevant factors when entering into an automatic roaming agreement, including the appropriate charge.

The mere failure of a few CMRS providers to offer in-market roaming should not be used as justification to force the entire industry to mandatory automatic roaming. Quite simply, the Commission should not get involved in the setting of roaming charges nor should it dictate a “one size-one charge” fits all approach as suggested by Omnipoint.<sup>25</sup> It is the flexibility of being able to craft agreements which make economic sense given the parties and circumstances involved which is critical to competition. AT&T and Sprint PCS seemingly recognize that a uniform set rate is not required. AT&T notes simply that “the Commission should also make it clear that charging higher rates for in-market roaming than out of market roaming is impermissible discrimination, unless such higher charges are reasonably based on factors other than the roaming carrier’s identity as a competitor”.<sup>26</sup> AT&T does not discuss what factors would be considered reasonable to justify the charging of a higher rate (e.g. Number of potential roamers? Use of the same technology by both parties home systems? Inability of one party to roam on the other party’s system?) Sprint PCS requests that the “Commission clarify that the imposition of service restrictions based upon the home market of a roaming PCS customer is unreasonable, unlawfully discriminatory and anti-

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<sup>25</sup> Omnipoint, pp. 1-2.

<sup>26</sup> AT&T, p. 10.



competitive”.<sup>27</sup> Sprint PCS likewise fails to discuss what would constitute reasonable discrimination in the setting of rates amongst various carriers. Thus, the relief requested by AT&T and Sprint PCS does not end the inquiry or forego the need for the formal complaint process. If AT&T, Sprint PCS or any other party is correct in their opinion that Title II is applicable then they can bring a formal complaint against those who they feel have unlawfully discriminated against them based on the specific facts of the case. The adoption of an industry-wide automatic roaming rule is not justified.

**c. There is no clear showing of a need to require automatic roaming with resellers.**

The Telecommunications Resellers Association, without providing any updated information or pointing to any specific recent development other than the awarding of the C/D/E/F block licenses claims that the automatic roaming rule should be applied for resellers. An automatic roaming requirements for resellers is not required and RTA has fallen short of demonstrating a clear-cut need for such regulation.

RTA makes the unsupported claim that “many CMRS carriers offer automatic roaming at what appears to be exorbitant rates—as much as 95 cents or more per minute, plus “daily” rates that are often as high as \$3.00 or more.”<sup>28</sup> RTA claims that mandating automatic roaming agreements for resellers will drive down such rates. Competition, not a regulatory mandate for automatic roaming for resellers, is driving roaming rates down. As noted in the Affidavit attached to SBMS’ October 4, 1996 Comments in this docket, SBMS has, through the process of negotiation, eliminated any type of “daily” charge—as

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<sup>27</sup> Sprint PCS, pp. 5-7.

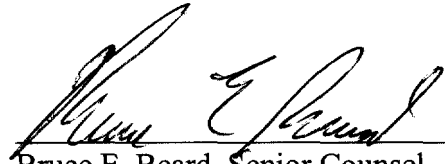
<sup>28</sup> RTA, p. 9.

of October 1996 “daily” charges had been eliminated in over 90% of the markets where SBMS customers roam. Further, as noted in the *Commission’s Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Services*, the continuing trend in the industry is reducing roaming fees and increasing the geographic range of service plans.<sup>29</sup> An automatic roaming requirement for resellers would be just as burdensome and costly as a general requirement, but without any benefit to any licensee. Further, it is unclear exactly how the scenario imagined in the RTA brief would work technically under current roaming procedures. Regardless, an automatic roaming requirement for resellers is unnecessary. Competition amongst the cellular providers and the PCS providers is sufficient to control roaming rates—a mandatory roaming requirement for resellers and its accompanying burdens are not required.

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<sup>29</sup> In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993: Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, 12 FCC Rcd 11266, 1997 FCC LEXIS 1513, at \*35-36 fn. 67 (Released March 25, 1997)

Respectfully Submitted,  
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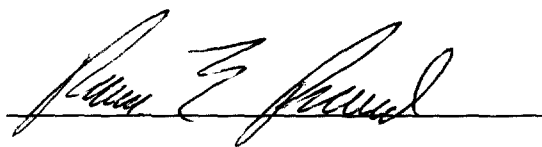
A handwritten signature in black ink, appearing to read "Bruce E. Beard", is written over a horizontal line.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing comments of Southwestern Bell Mobile Systems, Inc. and Pacific Bell Mobile Services have been sent by first class United States Mail, postage prepaid, or by hand delivery on January 19, 1998, to the persons listed on the attached service list.



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